

§ 252.171

12 CFR Ch. II (1–1–21 Edition)

requirements of § 252.172(c) beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a major foreign banking organization; provided that the foreign banking organization remains subject to the requirements of this subpart, unless it ceases to be a foreign banking organization that is a covered foreign entity pursuant to paragraph (d)(1)(i) of this section.

(2) *U.S. intermediate holding companies.* (i) Any U.S. intermediate holding company that becomes a covered foreign entity will remain subject to the requirements of this subpart unless and until:

(A) The covered foreign entity is not a Category II U.S. intermediate holding company; or

(B) The covered foreign entity is not a Category III U.S. intermediate holding company.

[84 FR 59119, Nov. 1, 2019, as amended at 85 FR 31952, May 28, 2020]

§ 252.171 Definitions.

Unless defined in this section, terms that are set forth in § 252.2 of this part and used in this subpart have the definitions assigned in § 252.2. For purposes of this subpart:

(a) *Adjusted market value* means:

(1) With respect to the value of cash, securities, or other eligible collateral transferred by the covered foreign entity to a counterparty, the sum of:

(i) The market value of the cash, securities, or other eligible collateral; and

(ii) The product of the market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132); and

(2) With respect to cash, securities, or other eligible collateral received by the covered foreign entity from a counterparty:

(i) The market value of the cash, securities, or other eligible collateral; minus

(ii) The market value of the securities or other eligible collateral multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132).

(3) Prior to calculating the adjusted market value pursuant to paragraphs (1) and (2) of this section, with regard to a transaction that meets the definition of "repo-style transaction" in § 217.2 of the Board's Regulation Q (12 CFR 217.2), the covered foreign entity would first multiply the applicable collateral haircuts in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132) by the square root of $\frac{1}{2}$.

(b) *Affiliate* means, with respect to a company:

(1) Any subsidiary of the company and any other company that is consolidated with the company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (b)(1) of this section, any subsidiary of the company and any other company that would be consolidated with the company, if consolidation would have occurred if such principles or standards had applied.

(c) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered foreign entity and all of its subsidiaries to a single counterparty as calculated under this subpart.

(d) *Bank-eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(e) *Capital stock and surplus* means, with respect to a U.S. intermediate holding company, the sum of the following amounts in each case as reported by the U.S. intermediate holding company on the most recent FR Y-9C on a consolidated basis:

(1) The tier 1 capital and tier 2 capital of the U.S. intermediate holding company, as calculated under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart O of the Board's Regulation YY (12 CFR part 252, subpart O); and

(2) The excess allowance for loan and lease losses of the U.S. intermediate holding company not included in its tier 2 capital, as calculated under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart O of the Board's Regulation YY (12 CFR part 252, subpart O).

Federal Reserve System

§ 252.171

(f) *Counterparty* means with respect to a credit transaction:

(1) With respect to a natural person:

(i) The natural person;

(ii) Except as provided in paragraph (f)(1)(iii) of this section, if the credit exposure of the covered foreign entity to such natural person exceeds 5 percent of tier 1 capital, the natural person and members of the person's immediate family collectively; and

(iii) Until January 1, 2021, with respect to a U.S. intermediate holding company that is a covered foreign entity and that has less than \$250 billion in total consolidated assets as of December 31, 2019, if the credit exposure of the U.S. intermediate holding company to such natural person exceeds 5 percent of its capital stock and surplus, the natural person and member of the person's immediately family collectively.

(2) With respect to any company that is not an affiliate of the covered foreign entity, the company and its affiliates collectively;

(3) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively;

(4) With respect to a foreign sovereign entity that is not assigned a zero percent risk weight under the standardized approach in the Board's Regulation Q (12 CFR part 217, subpart D), other than the home country foreign sovereign entity of a foreign banking organization, the foreign sovereign entity and all of its agencies and instrumentalities (but not including any political subdivision), collectively; and

(5) With respect to a political subdivision of a foreign sovereign entity such as a state, province, or municipality, any political subdivision of the foreign sovereign entity and all of such political subdivision's agencies and instrumentalities, collectively.¹

(g) *Covered foreign entity* is defined in § 252.170(a)(2)(i) of this subpart.

(h) *Credit derivative* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

¹In addition, under § 252.176, under certain circumstances, a covered foreign entity is required to aggregate its net credit exposure to one or more counterparties for all purposes under this subpart.

(i) *Credit transaction* means, with respect to a counterparty:

(1) Any extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding uncommitted lines of credit;

(2) Any repurchase agreement or reverse repurchase agreement with the counterparty;

(3) Any securities lending or securities borrowing transaction with the counterparty;

(4) Any guarantee, acceptance, or letter of credit (including any endorsement, confirmed letter of credit, or standby letter of credit) issued on behalf of the counterparty;

(5) Any purchase of securities issued by or other investment in the counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered foreign entity and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative between the covered foreign entity and a third party, the reference asset of which is an obligation or equity security of, or equity investment in, the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any other similar transaction that the Board, by regulation, determines to be a credit transaction for purposes of this subpart.

(j) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(k) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(1) *Eligible collateral* means collateral in which, notwithstanding the prior security interest of any custodial agent, the covered foreign entity has a perfected, first priority security interest

(or the legal equivalent thereof, if outside of the United States), with the exception of cash on deposit, and is in the form of:

(1) Cash on deposit with the covered foreign entity or an affiliate of the covered foreign entity (including cash in foreign currency or U.S. dollars held for the covered foreign entity by a custodian or trustee, whether inside or outside of the United States);

(2) Debt securities (other than mortgage- or asset-backed securities and securitization securities, unless those securities are issued by a U.S. government-sponsored enterprise) that are bank-eligible investments and that are investment grade, except for any debt securities issued by the covered foreign entity or any affiliate of the covered foreign entity;

(3) Equity securities that are publicly traded, except for any equity securities issued by the covered foreign entity or any affiliate of the covered foreign entity;

(4) Convertible bonds that are publicly traded, except for any convertible bonds issued by the covered foreign entity or any affiliate of the covered foreign entity; or

(5) Gold bullion.

(m) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship, or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay

its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(n) *Eligible equity derivative* means an equity derivative, provided that:

(1) The derivative contract has been confirmed by all relevant parties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

(o) *Eligible guarantee* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(p) *Eligible guarantor* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2), but does not include the foreign banking organization or any entity that is an affiliate of either the U.S. intermediate holding company or of any part of the foreign banking organization's combined U.S. operations.

(q) *Equity derivative* has the same meaning as "equity derivative contract" in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(r) *Exempt counterparty* means an entity that is identified as exempt from

Federal Reserve System

§ 252.171

the requirements of this subpart under § 252.177, or that is otherwise excluded from this subpart, including any sovereign entity assigned a zero percent risk weight under the standardized approach in the Board's Regulation Q (12 CFR part 217, subpart D).

(s) *Financial entity* means:

(1)(i) A bank holding company or an affiliate thereof; a savings and loan holding company as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)); a U.S. intermediate holding company established or designated for purposes of compliance with this part; or a nonbank financial company supervised by the Board;

(ii) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a federal credit union or state credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); a national association, state member bank, or state non-member bank that is not a depository institution; an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) Any person registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(v) A securities holding company as defined in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)–(5)); an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-53(a));

(vi) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a-7 (17 CFR 270.3a-7) of the U.S. Securities and Exchange Commission;

(vii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(viii) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(ix) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(x) Any designated financial market utility, as defined in section 803 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5462); and

(xi) An entity that would be a financial entity described in paragraphs (s)(1)(i) through (x) of this section, if it were organized under the laws of the United States or any State thereof; and

(2) Provided that, for purposes of this subpart, “financial entity” does not include any counterparty that is a foreign sovereign entity or multilateral development bank.

(t) *Foreign sovereign entity* means a sovereign entity other than the United States government and the entity’s agencies, departments, ministries, and central bank.

(u) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered foreign entity before adjusting, pursuant to §252.174, for the effect of any qualifying master netting agreement, eligible collateral, eligible guarantee, eligible credit derivative, eligible equity derivative, other eligible hedge, and any unused portion of certain extensions of credit.

(v) *Immediate family* means the spouse of an individual, the individual’s minor children, and any of the individual’s children (including adults) residing in the individual’s home.

(w) *Intraday credit exposure* means credit exposure of a covered foreign entity to a counterparty that by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

(x) *Investment grade* has the same meaning as in §217.2 of the Board’s Regulation Q (12 CFR 217.2).

(y) *Major counterparty* means any counterparty that is or includes:

(1) A U.S. bank holding company identified as a global systemically important BHC pursuant to §217.402 of the Board’s Regulation Q (12 CFR 217.402);

(2) A top-tier foreign banking organization that meets the requirements of §252.172(c)(3) through (5); or

(3) Any nonbank financial company supervised by the Board.

(z) *Major foreign banking organization* is defined in §252.170(a)(2)(ii) of this subpart.

(aa) *Multilateral development bank* has the same meaning as in §217.2 of the Board’s Regulation Q (12 CFR 217.2).

(bb) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered foreign entity and all of its subsidiaries calculated under §252.173, as adjusted in accordance with §252.174.

(cc) *Qualifying central counterparty* has the same meaning as in §217.2 of the Board’s Regulation Q (12 CFR 217.2).

(dd) *Qualifying master netting agreement* has the same meaning as in §217.2 of the Board’s Regulation Q (12 CFR 217.2).

(ee) *Securities financing transaction* means any repurchase agreement, reverse repurchase agreement, securities borrowing transaction, or securities lending transaction.

(ff) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(gg) *Sovereign entity* means a central national government (including the U.S. government) or an agency, department, ministry, or central bank, but not including any political subdivision such as a state, province, or municipality.

(hh) *Subsidiary*. A company is a subsidiary of another company if

(1) The company is consolidated by the other company under applicable accounting standards; or

(2) For a company that is not subject to principles or standards referenced in paragraph (ii)(1) of this definition, consolidation would have occurred if such principles or standards had applied.

(ii) *Tier 1 capital* means common equity tier 1 capital and additional tier 1 capital, as defined in subpart O of the

Federal Reserve System

§ 252.172

Board's Regulation YY(12 CFR part 252, subpart O).

(jj) *Tier 2 capital* means tier 2 capital as defined in subpart O of the Board's Regulation YY (12 CFR part 252, subpart O).

(kk) *Total consolidated assets*. (1) A foreign banking organization's *total consolidated assets* are determined based on:

(i) The average of the foreign banking organization's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y-7Q; or

(ii) If the foreign banking organization has not filed an FR Y-7Q for each of the four most recent consecutive quarters, the average of the foreign banking organization's total consolidated assets, as reported on the foreign banking organization's FR Y-7Q, for the most recent quarter or consecutive quarters, as applicable; or

(iii) If the foreign banking organization has not yet filed an FR Y-7Q, as determined under applicable accounting standards.

(2) A U.S. intermediate holding company's *total consolidated assets* are determined based on:

(i) The average of the U.S. intermediate holding company's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y-9C; or

(ii) If the U.S. intermediate holding company has not filed an FR Y-9C for each of the four most recent consecutive quarters, the average of the U.S. intermediate holding company's total consolidated assets, as reported on the company's FR Y-9C, for the most recent quarter or consecutive quarters, as applicable; or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y-9C, as determined under applicable accounting standards.

[83 FR 38501, Aug. 6, 2018, as amended at 84 FR 59120, Nov. 1, 2019]

§ 252.172 Credit exposure limits.

(a) *Transition limit on aggregate credit exposure for certain covered foreign entities*. (1) A U.S. intermediate holding company that is a covered foreign entity and that has less than \$250 billion in total consolidated assets as of Decem-

ber 31, 2019 is not required to comply with paragraph (b)(1) of this section until January 1, 2021.

(2) Until January 1, 2021, no U.S. intermediate holding company that is a covered foreign entity and that has less than \$250 billion in total consolidated assets as of December 31, 2019 may have an aggregate net credit exposure that exceeds 25 percent of the consolidated capital stock and surplus of the U.S. intermediate holding company.

(b) *Limit on aggregate net credit exposure for covered foreign entities*. (1) Except as provided in paragraph (a) of this section, no U.S. intermediate holding company that is a covered foreign entity may have an aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the U.S. intermediate holding company.

(2) No foreign banking organization that is a covered foreign entity may permit its combined U.S. operations to have aggregate net credit exposure to any counterparty that exceeds 25 percent of the tier 1 capital of the foreign banking organization.

(c) *Limit on aggregate net credit exposure of major foreign banking organizations to major counterparties*.

(1) [Reserved]

(2) No major foreign banking organization may permit its combined U.S. operations to have aggregate net credit exposure to any major counterparty that exceeds 15 percent of the tier 1 capital of the major foreign banking organization.

(3) For purposes of this subpart, a top-tier foreign banking organization will be a major counterparty if it meets one of the following conditions:

(i) The top-tier foreign banking organization determines, pursuant to 12 CFR 252.153(b)(6), that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(ii) The Board, using information available to the Board, determines:

(A) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the top-tier foreign banking organization, if it were subject to the